

# HOUSE BILL REPORT

## SSB 5692

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### As Passed House - Amended:

April 15, 2005

**Title:** An act relating to tax refund anticipation loans.

**Brief Description:** Regulating tax refund anticipation loans.

**Sponsors:** By Senate Committee on Financial Institutions, Housing & Consumer Protection (originally sponsored by Senators Berkey, Benton, Prentice and Keiser).

### Brief History:

#### Committee Activity:

Financial Institutions & Insurance: 3/22/05, 3/31/05 [DPA].

#### Floor Activity:

Passed House - Amended: 4/15/05, 94-0.

### Brief Summary of Substitute Bill (As Amended by House)

- Requires registration of facilitators with the Department of Financial Institutions.
- Allows a borrower to rescind the loan by the close of business the next day.
- Prohibits certain practices by a facilitator.
- Requires certain disclosures in connection with tax refund anticipation loans.
- Imposes penalties for violations.
- Preempts, retroactively and prospectively, any local government actions on tax refund anticipation loans.

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## HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, O'Brien, Santos, Serben, Simpson, Strow and Williams.

**Staff:** Jon Hedegard (786-7127).

### Background:

Refund anticipation loans (RALs) are loans made by a lender to a taxpayer based on that taxpayer's anticipated federal income tax refund. If a refund is due, a loan may be offered to a taxpayer at the time of tax preparation and filing by a tax preparer or RAL "broker" or "facilitator." The taxpayer/borrower signs a contract authorizing the lender to receive the tax refund from the Federal Internal Revenue Service (IRS). The borrower is given a loan secured by the refund immediately. Fees are deducted from the amount of money given to the borrower. The loan is repaid directly by the refund. The borrower is liable if the refund paid by the IRS is less than the loan.

The RALs are currently not subject to regulation by the Department of Financial Institutions (DFI). The majority of the loan products are made by national banks or subsidiaries. The federal government has preempted state regulation of those entities. The loan broker or facilitator is not regulated under current state lending laws.

The Washington Consumer Protection Act (CPA) declares that unfair and deceptive practices in trade or commerce that harm the public interest are illegal. The CPA gives the Office of the Attorney General the authority to bring lawsuits against businesses, and to ask the court for injunctions and restitution for consumers. It also allows individuals to hire their own attorneys to bring consumer protection lawsuits. If the consumer wins in court, the law allows the court to award triple the amount of actual damages, up to \$10,000, as well as attorney's fees.

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### **Summary of Amended Bill:**

A "refund anticipation loan" (RAL) is defined as a loan borrowed by a taxpayer from a lender based on the taxpayer's anticipated federal income tax refund.

"Department" is the Department of Financial Institutions. "Director" is the Director of the Department of Financial Institutions.

"Facilitator" is defined as a person who receives or accepts for delivery an application for a RAL, delivers a check in payment of RAL proceeds, or in any other manner acts to allow the making of a RAL.

Facilitator does not include financial institutions (such as a bank or credit union), the affiliate of a financial institution, or any person who acts solely as an intermediary and does not deal with a taxpayer in the making of the RAL.

### **Registration**

Facilitators must be:

a tax preparer or work for a person that engages in the business of tax preparation; accepted by the IRS as an authorized e-file provider; and registered with the DFI.

A person is registered with the DFI by providing the department on or before December 31 of each year with a list of authorized e-file providers for the current tax filing year and a \$35 processing fee for each authorized e-file provider.

### Disclosure

A facilitator must disclose the refund anticipation loan fee schedule. The schedule must list each fee or charge separately imposed, an estimate of the total of all fees for making of the RAL, and the estimated annual percentage rate calculated under the federal Truth in Lending Act for three representative loans.

A facilitator must disclose in writing, in at least 10 point type, that: the RAL is a loan, not the borrower's actual income tax refund; the taxpayer can file an income tax return electronically without applying for a RAL; the average amount of time it takes the IRS to provide a refund to a taxpayer when a return is filed electronically and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer; the average amount of time it takes the IRS to provide a refund to a taxpayer when a return is mailed to the internal revenue service and the refund is directly deposited to the taxpayer's bank account or mailed to the taxpayer; the IRS does not guarantee that it will pay the full amount of the anticipated refund; the IRS does not guarantee a specific date that a refund will be deposited into a taxpayer's financial institution account or mailed to a taxpayer; the borrower is responsible for repayment of the loan and related fees in the event that the tax refund is not paid or paid in full; the estimated time within which the loan proceeds will be paid to the borrower if the loan is approved; and the fee that will be charged, if any, if the borrower's loan is not approved.

### Prohibited acts

A facilitator is prohibited from:

misrepresenting a material factor or condition of a RAL; failing to process the application for a RAL promptly after the consumer applies for the loan; engaging in any dishonest, fraudulent, unfair, unconscionable, or unethical practice or conduct in connection with a RAL; arranging for a creditor to take a security interest in any property of the consumer other than the proceeds of the consumer's tax refund and the account the refund will be placed into to secure payment of the loan; and offering a loan that, including any fees related to the loan or tax preparation, that exceeds the tax refund.

### Right of Rescission

A borrower may rescind the loan by returning the borrowed amount or the original check by the close of business the day after the loan was made. The facilitator may not charge a fee for rescinding the loan but may charge the borrower for the administrative cost of establishing a bank account to electronically receive the refund.

### Penalties

Persons knowingly violating the chapter are guilty of a misdemeanor and shall be fined up to \$500 per offense.

A violation of the bill is a violation of the Consumer Protection Act.

### State preemption

The bill retroactively and prospectively preempts any local government actions on a RAL transaction.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** These are short-term loans made in anticipation of a federal tax refund. Disclosure is required prior to the loan. Refund anticipation loans are very popular today. They need appropriate regulation. The bill is a result of hard work and compromises. This bill does not have a rescission provision. The rescission provision included in the House bill raises some concerns. If the committee decides to include a rescission provisions, please work with industry to perfect the language. The state does not regulate RALs today but the federal government does regulate the subject. The IRS takes this subject very seriously. Since the federal government regulates the subject, state licensing requirements duplicate those efforts and is unnecessary. The House added several prohibited activities that are not included in the Senate bill. One of those provisions, the prohibition on charging fees is a concern. Not all companies charge a fee but all companies oppose the prohibition. The other prohibited activities in the House bill are not opposed by industry.

**Testimony Against:** None.

**Persons Testifying:** Senator Berkey, prime sponsor; Tom Echols, The Hong Kong and Shanghai Banking Corporation of North America; Steve Gano, Jackson Hewit; and Cliff Webster, H&R Block.

**Persons Signed In To Testify But Not Testifying:** None.